

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF PONTIAC,

Plaintiff-Counter-Defendant-
Appellant,

v

MICHIGAN ASSOCIATION OF POLICE and
PONTIAC POLICE OFFICERS ASSOCIATION,

Defendants-Counter-Plaintiffs-
Appellees.

UNPUBLISHED
February 22, 2005

No. 251694
Oakland Circuit Court
LC No. 2002-046390-AZ

Before: Fort Hood, P.J. and Griffin and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition and ordering enforcement of an arbitration award. Because defendant has not shown that the arbitrator failed to draw the essence of the award from the agreement to arbitrate, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This matter arises out of four earlier arbitrations in which three Pontiac police officers were reinstated with back pay after successfully challenging their dismissal or demotion. The union asserted that to make the officers whole, the back pay should include payment for lost overtime. The union filed a complaint in Oakland Circuit Court in June 2001 asking the court to issue an order to show cause why the officers should not receive overtime as part of their back pay. The parties subsequently entered into an agreement to arbitrate the dispute.

The agreement contained the following provisions:

1. The dispute which currently forms the subject matter of the action, i.e., whether overtime should be included in the calculation of back pay for these grievants, shall be submitted to ad hoc binding arbitration before Arbitrator George Roumell;

2. The subject matter of the arbitration is whether the arbitration awards in the Wood, Fuqua, and two separate York arbitrations ought to include payment of overtime wages as part of the remedy ordered by each of the arbitrators;

3. The ad hoc arbitration is an alternative method of resolving the dispute over the question whether back pay as ordered by the arbitrators includes overtime and this determination shall be binding on the parties, including the individual grievants. However, this determination will not be considered as precedent setting by either party;

4. The decision by Arbitrator Roumell will be final and binding on the parties and the grievants and will result in a stipulation by the parties and order of dismissal with prejudice will be entered by the court when the decision is issued. The decision of Arbitrator Roumell may be enforced in a court of competent jurisdiction.

5. Arbitrator Roumell shall limit his decision to whether overtime pay is properly included as part of the back pay remedy for each of the respective grievants in each arbitration decision. The arbitrator's decision will be based on that grievant's prior history of overtime worked and the availability of overtime during the time he was off work. The parties do not intend that the discharge grievances be re-litigated and the scope of the ad hoc arbitration shall be strictly limited to the issue noted above;

* * *

7. By entering into this Agreement neither party waives any defenses and shall not be prejudiced in raising defenses during the arbitration;

The arbitrator rejected plaintiff's jurisdictional challenge, finding that the agreement to arbitrate read in its entirety showed that the parties intended the arbitrator to have jurisdiction to decide the dispute over back pay. Reading the agreement as plaintiff suggested would render the agreement void, which was not the parties' intent. The circuit court found that the arbitrator carefully considered plaintiff's jurisdictional defenses, and it enforced the award

Judicial review of an arbitrator's decision is limited. A court may not review an arbitrator's findings of fact or decision on the merits. A court may only decide whether the arbitration award draws its essence from the contract. If the arbitrator did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002), quoting *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989).

The arbitrator did not ignore plaintiff's jurisdictional claim. He specifically considered section 7, and found that the provision was not intended to deprive him of jurisdiction in the face of the more specific provisions that defined his duties. Defendant has not shown that the

arbitrator failed to draw the essence of the award from the agreement to arbitrate, and judicial review of the award is not appropriate.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio